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In re Application of
WERNER, Wolfgang
U.S. Application No.: 09/623,924
PCT No.: PCT/DE99/00268
International Filing Date: 01 February 1999
Priority Date: 10 March 1998
Attorney's Docket No.: GR 98 P 1307
For: MEASURING DEVICE WITH A
MICROSENSOR AND METHOD FOR ITS
PRODUCTION

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is issued in response to applicants' "Petition Under 37 CFR 1.8(b)" filed on 02 July 2001, which has been treated as a petition under 37 CFR 1.181 to confirm the filing of a timely response to the Notification Of Missing Requirements mailed 25 October 2000. No petition fee is required.

BACKGROUND

On 01 February 1999, applicant filed international application PCT/DE99/00268 which claimed a priority date of 10 March 1998 and which designated the United States. On 16 September 1999, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 28 September 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 11 September 2000 (10 September 2000 was a Sunday).

On 11 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 25 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the following were required: (1) an oath or declaration in compliance with 37 CFR 1.497; (2) the surcharge for providing the oath or declaration later than 30 months from the priority date; (3) a translation of the application into English; and (4) the processing fee for providing the

English translation later than 30 months from the priority date. The Notification also informed applicant that the failure to submit these materials within one month of the mail date of the Notification would result in abandonment of the application.

On 11 June 2001, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States for failure to respond to the Notification Of Missing Requirements.

On 02 July 2001, applicants filed the petition considered herein. The petition asserts that, on 16 November 2000, applicants mailed a timely response to the Notification of Missing Requirements that included the required English translation, executed declaration and fee payments. Among the materials attached to the present petition is a copy of the previously filed declaration and English translation, and a copy of a return postcard that specifically identifies the present application, itemizes the declaration, translation, and fee payments, and bears a USPTO receipt stamp dated 20 November 2000.

DISCUSSION

Based on applicant's statements, the stamped return postcard, and internal USPTO records which confirm receipt of the \$130 surcharge and \$130 processing fee payments on 20 November 2000, it is concluded that the response to the Notification Of Missing Requirements attached to the present petition, including the executed declaration, English translation, and fee payments, were originally filed on 20 November 2000 as a timely response to the Notification Of Missing Requirements mailed 25 October 2000. Accordingly, the Notification Of Abandonment mailed on 11 June 2001, based as it was on applicants' purported failure to file a timely response to the Notification Of Missing Requirements, is appropriately vacated.

A review of the declaration filed on 20 November 2000 reveals that it is in compliance with 37 CFR 1.497.

A review of the English translation, however, finds that the translation is incomplete in that it fails to include a translation of claim 23 from the published international application. This claim was apparently canceled by amendment during the international examination process. However, regardless of subsequent amendments, applicant is required to provide a translation into English of the entire international application as filed, including the original version of amended or canceled claims.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed on 11 June 2001 is hereby **VACATED**.

The materials attached to the present petition, including the executed declaration and the surcharge payment, are treated as having been originally filed on 20 November 2000

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of A Defective Translation.



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